

Section 10 of the Use Tax Act, 35 ILCS 105/10 provides that a purchaser of a motor vehicle from an out-of-State retailer shall file a return (Form RUT-25, Motor Vehicle Use Tax Return) with the Department and remit the proper amount of tax due on the selling price of the motor vehicle within 30 days after such motor vehicle is brought into this State for use. (This is a GIL).

December 22, 1999

Dear Xxxxx:

This letter is in response to your letter dated November 9, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

My husband and I leased two vehicles (36 months each) on January 30, 1999. Although these vehicles were leased from a dealer in Indianapolis, IN, we knew (and informed the dealer) that we were immediately moving to CITY, Illinois. As a result, we were required to and did pay a vehicle 'use tax' on the full term of both leases to the state of Illinois up-front. I have spoken with a representative of the Illinois Department of Revenue and the precise nature of the taxes imposed is unclear. That is, although the tax is termed a 'use tax,' I am told that it is calculated on the total value of the vehicle. To me, this seems to be a 'sales tax,' since it has no relationship to the duration of the use of the vehicle in the State of Illinois. (Obviously, we wouldn't expect to pay sales tax on a **leased** vehicle.) In any event, these charges were paid by us at the time we obtained our Illinois license plates. The two vehicles, which were leased from COMPANY in Indianapolis, IN, are:

- 1) VEHICLE - amount paid: \$1,478.25;
- 2) VEHICLE - amount paid \$1,450.10.

On August 27, 1999, we moved back to Indianapolis. As a result, we feel it is clear that we are entitled to receive a refund of the pro-rated portion of the taxes that were paid to the State of Illinois, but were not used (36 months minus 7 months = 29 months). Therefore, we expect a refund in the total amount of \$2,358.95

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Thank you for your attention to this matter and anticipated prompt response. Please feel free to call me at #### if you need any additional information.

Illinois taxes the retail sale and use of tangible personal property under two separate but related statutes. The Retailers' Occupation Tax Act imposes a tax on Illinois retailers measured by a percentage of their gross receipts from sales for use or consumption. 35 ILCS 120/1 et seq. The Use Tax Act imposes a corresponding tax on purchasers by taxing the use of tangible personal property purchased from retailers. 35 ILCS 105/1 et seq.

In Illinois, lessors of tangible personal property under a true lease, except for automobiles leased for terms of one year or less, are considered to be the end users of the property to be leased. See the enclosed copies of 86 Ill. Adm. Code 130.220 and 130.2010. As the end users of tangible personal property located in Illinois, lessors incur Use Tax on the lessors' cost price of the property. Since lessors are considered the end users of the property and have paid the Use Tax, no Retailers' Occupation Tax is imposed upon the rental receipts and the lessees incur no Use Tax liability for the rental charges. In Illinois, a true lease generally has no buy out provision at the close of the lease. If a buy out provision does exist, it must be a fair market value buy out option in order to maintain the character of the true lease.

As stated above, lessees do not incur Use Tax liability in true lease situations. However, when a lessee registers the automobile, the lessee must either show that tax has been paid or that there exists an exemption from tax. If a lessee does not have documentation that the lessor has properly paid Illinois tax, the tax, as a practical matter, has to be paid by the lessee in order to register the vehicle since there is no exemption for leased vehicles.

While lessees do not incur any tax liability in a true lease situation, it is typical of true leases to contain contractual provisions stating that the lessees will reimburse the lessors for their tax costs. This is not a matter of Illinois tax law but of private agreement between lessors and lessees. If the lessees agreed to such provisions, they are bound to satisfy that duty because of a contractual agreement, not because of Illinois tax law. Again, lessors are liable for Use Tax when they purchase vehicles for leasing purposes. However, lessors may have contractually required lessees to reimburse the lessors for the lessors' Use Tax that is incurred by the lessors in regard to the purchase of the leased vehicles.

The alternative to a true lease is a conditional sale. In Illinois, a conditional sale is usually characterized by a nominal purchase option at the close of the lease term. This type of transaction is considered a conditional sale at the outset of the transaction making all receipts subject to Retailers' Occupation Tax. See Section 130.2010. In this situation, lessors/retailers may give Certificates of Resale to their suppliers for tangible personal property transferred subject to a conditional sales agreement. The lessors/retailers owe Retailers' Occupation Tax on any installment payments when they are received by the lessors/retailers. The lessees/purchasers owe corresponding Use Tax on the amount of the installment payments that are collected by the lessors/retailers. However, tax on motor vehicles has to be paid up front at one time.

Section 10 of the Use Tax Act, 35 ILCS 105/10, provides that a purchaser of a motor vehicle from an out-of-State retailer shall file a return (Form RUT-25, Motor Vehicle Use Tax Return) with the Department and remit the proper amount of tax due on the selling price of the motor vehicle within 30 days after such motor vehicle is brought into this State for use. Assuming that an individual has entered into a true lease of a vehicle, the lessor is the purchaser who is required to file Form RUT-25 and remit the tax to the Department. Use Tax is properly due by the lessor when it purchases the vehicle for leasing purposes. In a true lease situation, Illinois will give a credit for taxes properly due and paid in another state. See 86 Ill. Adm. Code 150.310, enclosed. Depreciation is also allowed for out-of-State use. In addition, the Use Tax does not apply to the use, in this State, of tangible personal property which is acquired outside this State by a nonresident individual who then brings the property to this State for use here, and who shall have used the property outside this State for at least 3 months before bringing the property to this State. See the enclosed copy of 86 Ill. Adm. Code 150.315. This exemption is not applicable if the 3-month requirement is not met, or if the purchase is not made by a nonresident individual.

If taxpayers pay amounts of taxes under the sales tax laws that are not due, either as a result of a mistake of fact or an error of law, the taxpayers may file claims for credit with the Department. It does not appear that there are any exemptions available in this case. Therefore there is no overpayment to be refunded.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Martha P. Mote
Associate Counsel

MPM:msk
Enc.